

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HENRY P. AND ROSE SANDERSON)

For Appellants: Henry P. and Rose Sanderson,
in pro. per.

For Respondent: Bruce R. Langston
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision ('a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Henry P. and Rose Sanderson for refund of personal income tax in the amount of \$418.37 for the year 1977.

Appeal of Henry P. and Rose Sanderson

The question presented is whether appellants can retroactively elect to report the sale of real estate on the installment basis after reporting the entire gain from the sale on their original return for the year of the sale.

In February of 1977, appellants sold their California home at a gain. Later that year, they moved to New Mexico. On their original part-year resident California income tax return for 1977, appellants reported the entire gain from the sale. On December 24, 1979, however, appellants filed an amended return which sought to report the gain on the installment method and indicated a refund due to them of \$418.37. Subsequently, respondent denied the refund claim on the ground that an election not to use the installment method of reporting is binding and may not be changed after the due date of the original return.

We have considered this precise issue in two previous appeals involving very similar facts, and in both cases we held that an election not to use the installment method of reporting is binding and may not be changed after expiration of the time allowed for filing the return for the year of the sale. (Appeal of Glenn R. and Julia A. Stewart, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Carl H. and Ellen G. Bergman - Cal. St. Bd. of Equal., Feb. 19, 1974.) Our holding in each case was based on the U.S. Supreme Court's decision in Pacific National Co. v. Welch, 304 U.S. 191 [82 L.Ed. 1282] (1938), which reasoned that the taxpayer could not be allowed to change his election in a later year, because to do so would impose burdensome uncertainties upon the administration of the tax laws and would enlarge the statutory period for filing returns.

The same result is required in this case. Although we can sympathize with the appellants, who argue that they would have elected the installment method of reporting if the person who prepared their return had advised them of its availability, the law is clear that they are bound by the method of reporting selected in their original return. Their remedy, if any, must lie against the return preparer who failed to advise them properly.

For the above reasons, respondent's action in this matter must be sustained.

Appeal of Henry P. and Rose Sanderson

O R D E R

Pursuant to the views expressed in the opinion of the board on 'file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Henry P. and Rose Sanderson for refund of personal income tax in the amount of \$418.87 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day Of December , 1983, by the State Board of Equalization, **with** Board Members Mr. Bennett, Mr. Collis, **Mr.** Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman
Conway H. Collis , Member
Ernest J. Dronenburg, Jr. , Member
p Richard Nevins ----- I ----- , Member
_____, Member